

PERMISSION TO COPY DENIED, HRS 606.13, etc. 2

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2 MARCH 16, 1999

3 THE COURT: The record will note the presence

4 of [Topasna]; his counsel, and the prosecutor, in the

5 absence of the jury panel. [Defense counsel].

6 [DEFENSE COUNSEL]: I understand, Your Honor, my

7 client will be changing his plea and accepting an

8 agreement by the State -- or from the State. Excuse me.

9 THE COURT: Is that correct, [Topasna]?

10 [TOPASNA]: Yes, Your Honor.

11 THE COURT: Okay. I need to ask you some

12 questions to make sure you understand the charges that

13 you're pleading. Is it guilty or no contest?

14 [DEFENSE COUNSEL]: They require a guilty plea as

15 opposed to no contest.

16 THE COURT: Okay.

17 BY THE COURT:

18 Q What is your full name?

19 A Alfred Leon Guerrero Topasna.

20 Q How old are you?

21 A 46.

22 Q How much education have you had?

23 A Up to nine and a half.

24 Q Do you read and write English?

25 A Yes.

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APPENDIX A

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1 Q Are you under the influence of any alcohol or

2 drugs this afternoon?

3 A None.

4 Q Are you under treatment for any mental illness

5 or emotional disability?

6 A No, Your Honor.

7 Q Is your mind clear?

8 A Yes, sir.

9 Q I have a plea form here that appears to have

10 been signed by you on the middle of the second page. Did

11 you sign this form?

12 A Yes.

13 Q Did [defense counsel] read and explain the form to

14 you before you signed it?

15 A Yes, sir.

16 Q Do you understand everything in the form?

17 A Yes.

18 Q Do you have any questions about anything on

19 the form?

20 A No, sir.

21 Q You sure?

22 A Yeah. I asked the counselor already.

23 Q All right. Now, it says here that you're

24 going to plead guilty to Counts I and through IV, Sexual

25 Assault in the Second Degree; Count V, Sexual Assault in

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1 the Fourth Degree; and Count VI, Sexual Assault in the

2 Third Degree. Is that right?

3 A Yes.

4 Q Has each one of these six charges been

5 explained to you by [defense counsel]?

6 A Yeah, kind of.

7 Q Well, you have six separate charges.

8 A Yes, sir.

9 Q What I need to know is whether you understand

10 what you're charged with in each of those six charges.

11 A I think I got an idea of what the six - -

12 Q Well, to make sure, Count I charges you with

13 knowingly inserting your finger into the vagina of

14 [the complaining witness] sometime between September 1st, 1992, and

15 June 9th, 1995. Do you understand that charge?

16 A Could you repeat that, Your Honor?

17 Q Okay. Sometime between September 1st, 1992,  
18 and June 9th, 1995, you knowingly inserted your finger  
19 into the vagina of [the complaining witness].

20 A Yes. I understand that.

21 Q You understand what youre being charged with?

22 A Yeah.

23 Q Okay. Then Count II charges you with  
24 knowingly inserting your penis into [the complaining witness's]  
25 vagina between the same two dates, January 9th, 1992, and

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1 June 9th, 1995. Do you understand that charge?

2 A Yes, Your Honor.

3 Q Count III charges you with knowingly placing  
4 your mouth on [the complaining witness's] vagina between January  
5 9th, 1995, and March 19th, 1997.

6 [PROSECUTOR]: Your Honor, for the record,  
7 September 1st, 1995.

8 THE COURT: Okay. I'll transpose that.

9 BY THE COURT:

10 Q September 1st, 1995 to March 19th, 1995. Do

11 you understand Count III?

12 A Yes, Your Honor.

13 Q Okay. Count IV charges you with knowingly

14 inserting your penis into [the complaining witness's] vagina

15 sometime between September 1st, 1995, and March 19th

16 1997. Do you understand Count IV?

17 A Yes, Your Honor.

18 Q Count V charges you with knowingly placing

19 [the complaining witness's] hand on your penis by compulsion; that

20 is without her consent, sometime between September 1st,

21 1995, and March 19th, 1997. Do you understand Count V?

22 A Yes, Your Honor.

23 Q And the last count is Count VI. That charges

24 you with knowingly placing your hand on [the complaining witness's]

25 vagina by strong compulsion -- maybe some sort of force

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1 involved -- between March 1st, 1997, and March 31st,

2 1997. Do you understand Count VI?

3 A Yes.

4 Q All right. Do you have any questions about

5 any of the counts?

6 A First time I seen the dates or any of this --

7 you know.

8 Q Excuse me?

9 A This the first time I seen these charges and

10 the dates and the years that this happened. I've never

11 seen this before.

12 Q Okay. Do you have any questions about the

13 counts, though?

14 A Well --

15 Q I'll tell you what, [Topasna], you know,

16 it's up to you what you do in this case. My

17 understanding is that the State has offered a plea

18 agreement and you at least tentatively agreed to accept

19 that plea agreement or vice versa. You offered to plead

20 and they agreed to your offer. Whatever way it happened.

21 But there's still a jury outside, and you can always go

22 to trial.

23 You know, I need to know what you really want

24 to do here today. And the first step is finding out

25 whether you understand the charges. And you've said that

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1 you understand the charges?

2 A Now.

3 Q But do you have any questions about that? We

4 need to know that you understand what you're being

5 charged with.

6 A Now I've seen what -- that's the first time

7 I've seen this.

8 Q Okay.

9 A But --

10 Q Do you have any questions about the charges?

11 A Not right now, I guess.

12 Q All right. Have you and [defense counsel] discussed

13 possible defenses that could be raised to these charges?

14 A That was just -- you know, that was with [the motions judge].

15 But it's not admissible right?

16 Q Well, did you discuss the defenses with

17 [defense counsel]?

18 A Yes.

19 Q Okay. So you understand the defenses in your

20 case -- the possible defenses?

21 A Yes.

22 Q Now, do you understand that if it were not for

23 the plea agreement in this case, the maximum penalty for

24 Counts I and II -- excuse me -- isn't Count I and 2 A?

25 [PROSECUTOR]: Yes, Your Honor.

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1 BY THE COURT:

2 Q Counts I and II are Class A felonies, and they

3 would have carried a maximum of 20 years in prison and a

4 \$50,000 fine, okay? Counts II -- excuse me -- III, IV -

5 III and IV would have carried a maximum penalty of 10

6 years in prison and a \$25,000 fine. Count V would carry

7 a maximum penalty of 1 year in prison and a \$2,000 fine.

8 And Count VI is a Class C felony. It would carry a

9 maximum penalty of 5 years in prison and a \$10,000 fine.

10 Okay. [Topasna], if there were no plea

11 agreement in this case, you could be sentenced to a total

12 of 66 years in prison and a total fine of \$162,000 for

13 all of the offenses together. You understand?

14 A Yes, Your Honor.

15 Q Okay. And there's also a possibility, because

16 of the number of counts involved, that your maximum

17 prison term could be doubled from 65 years, okay -- you

18 double those 65 years, and you would get 130, I think.

19 [DEFENSE COUNSEL]: I think 20 gets life term.

20 THE COURT: Okay. Life. Im sorry. All

21 right. Let me start all over again.

22 BY THE COURT:

23 Q You understand that if there weren't for a

24 plea agreement in this case, the maximum prison term

25 would be 66 years and the maximum fine, \$162,0000?

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1 There's a possibility that your prison term could be

2 extended to life if there were no plea agreement. Do you

3 understand that?

4 A Yes.

5 Q Okay. Now, under the terms of the plea

6 agreement, the Class A felonies, Counts I and II, are

7 being reduced to Class B felonies, I understand. And the

8 agreement is that the maximum penalty in your case would

9 be 10 years in Counts I and II; Counts III and IV, also

10 10 years; Count V, 1 year; and Count VI, 5 years. And

11 all those terms would run concurrently so that you would

12 be given a maximum term of 10 years in prison. Is that

13 your understanding of the plea agreement?

14 A Yes, Your Honor.

15 Q So you understand that if you accept the plea

16 agreement, I am going to sentence you to a maximum of 1

17 years in prison? There's no possibility of probation in

18 this case if you accept the plea agreement.

19 A Yes, sir.

20 Q You understand that?

21 A Yes.

22 Q Okay. Now, do you understand that conviction

23 of any of these offenses would obligate you to comply

24 with the requirements of the sex offender registration

25 and notification law for the rest of your life?

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1 A Yes, Your Honor.

2 Q Has [defense counsel] explained the requirements of

3 the registration law to you?

4 A Yes.

5 Q Okay. Do you understand that under the  
6 registration - - registration law, you are required to  
7 furnish and update information pertaining to your  
8 identification; legal, temporary, and anticipated  
9 addresses; employment; vehicles; criminal history;  
10 treatment; and citizenship?

11 A Yes.

12 Q And you must report changes within three days  
13 and register in other states you may establish residence  
14 in?

15 A Yes, Your Honor.

16 Q Do you understand that the information you  
17 provide will be available to law enforcement and other  
18 government agencies and may be accessible to the public?

19 A Yes.

20 Q And do you understand that a knowing or  
21 intentional failure to comply with the registration law  
22 may result in imprisonment for up to 5 years and a fine  
23 of up to \$10,000, and even a reckless failure to comply  
24 may result in imprisonment for up to a year and a fine of  
25 up to \$2,000?

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1 A Yes.

2 Q Now, knowing the penalties that you face, the

3 reduced penalty, I guess, with the plea agreement, and

4 all of the ramifications of the registra - - the sexual

5 offender registration law, do you still want to plead

6 guilty in this case?

7 A Yes, Your Honor.

8 Q Do you understand that if you are not a United

9 States citizen, conviction of any one of these charges

10 could result in your being deported, not allowed back

11 into the country, or denied naturalization?

12 A Yes, Your Honor.

13 Q Do you understand that you have the right to

14 plead not guilty, to persist in that plea, and to go to

15 trial no matter how strong the evidence against you might

16 be?

17 A Yes.

18 Q In other words, you can go to trial even if

19 you're guilty and the Court wont punish you any - - any

20 worse or harsher just because you went to trial. Do you

21 understand?

22 A What if you're not guilty?

23 Q Well, if you're not guilty, you should go to

24 trial.

25 A Yeah. But if you're found guilty, you still

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1 have to face a bigger ball game. That's what I'm afraid

2 of.

3 Q All right. Do you understand that if you

4 plead guilty, you're giving up your right to a trial, so

5 we were not going to have a trial -- we were going to stop

6 the trial right now?

7 A Yes.

8 Q You're also giving up all of the rights

9 you would have had at trial, which is to have the State prove

10 you guilty beyond a reasonable doubt of all of these six

11 charges. The jury, 12 people, would all have to

12 unanimously agree that you were guilty before you could

13 be found guilty of any of the charges. You would have

14 the right to cross-examine --

15 All 12 of the jurors would have to agree that

16 you were guilty before you could be found guilty of any

17 of these charges.

18 A Of any of 'em?

19 Q Yeah. Each charge, for you to be found

20 guilty, all 12 would have to say you were guilty. So six

21 of the -- six times, all 12 would have to say you were

22 guilty for the six counts. All right? Do you

23 understand?

24 A Yes.

25 Q And you're giving that up if you plead guilty;

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1 right?

2 A That's a lot.

3 Q All right?

4 A Yes.

5 Q And you know, you're giving up your right to

6 question all of the witnesses who would testify against

7 you. You're giving up your right to present your own

8 witnesses and to compel them to come to court, even if

9 they didn't want to come. You're giving up your own

10 right to testify yourself and also your right to remain

11 silent at your trial. Do you understand that if you

12 plead guilty, you're giving up all of these rights?

13 A Yes.

14 Q All right. What's going to happen,

15 [Topasna], is if you plead guilty, I'm just going to

16 find you guilty and sentence you in accordance with the

17 plea agreement and you won't have a trial. Do you

18 understand that?

19 A Yes.

20 Q And is that what you want to do?

21 A To be honest with you, no. But I'm afraid of

22 the other - - going through the trial and then finding

23 myself in a bigger pot of stew.

24 Q Well, I understand. But this has to be your

25 decision, okay? If you want to go that way, then fine.

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1 We'll proceed that way. But I need to know that you

2 really want to do it that way. And if you do, fine. If

3 not, its also fine.

4 Let me ask you this: Is anybody forcing you

5 or pressuring you in any way to plead guilty in this

6 case?

7 A I dont have nobody, Your Honor. But I don't

8 have good enough people to -- I mean, before the -- the

9 accusation was -- not enough evidence to -- for me to

10 fight with. Its like --

11 Q Well, if you go to trial, [Topasna], all the

12 rulings havent been made yet. But the rulings that

13 you 're aware of -- if you go to trial, you can appeal

14 those rulings. You understand? You can take it to a

15 higher court. And if the court down here made a mistake,

16 then you might be entitled to a new trial. Right?

17 That's what appeals are for. If you plead guilty, you

18 give up your right to appeal. So you 're not going to

19 have an opportunity to appeal any ruling at this level.

20 A Well, what was the last -

21 Q Okay. I was asking you if anybody was forcing

22 you to plead guilty in this case.

23 A No.

24 Q And is that what you want to do?

25 A Yeah.

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1 Q Is that a yes?

2 A Yes.

3 Q And you realize that if you plead guilty,

4 you're giving up – your right to appeal?

5 A Yes, Your Honor.

6 Q Again, the plea agreement calls for the State

7 to reduce Count I and Count II from Class A felonies to

8 Class B felonies; the parties stipulate to an open 10

9 years of imprisonment and an open 5-year term of

10 imprisonment; all jail terms shall be concurrent; and the

11 State will not seek an extended jail term; and that you

12 agree to registration as a sex offender and sex offender

13 treatment. Do you understand the plea agreement?

14 A Yes.

15 Q And do you have any questions about it?

16 A No, Your Honor.

17 Q Do you want to go ahead with the plea

18 agreement?

19 A Yes and no.

20 Q Well, you only get one choice on that one.

21 I'm sorry, [Topasna]. You need to choose one of 'em.

22 Do you know what you want to do, [Topasna]?

23 A I'm trying to find an easy way out of this,

24 Your Honor. Just none of it is easy.

25 Q There is no easy way out of this one,

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1 [Topasna]. Well, your two choices right now are to

2 take a plea agreement or go to trial. What do you want

3 to do, [Topasna]?

4 A I guess Ill take the deal.

5 Q The Court will be -- will agree to be bound by

6 the plea agreement so that your sentence will be in

7 accordance with it. You know exactly what the sentence

8 will be.

9 Aside from the plea agreement, has anybody

10 made any other promises of any kind to you in return for

11 your plea?

12 A No.

13 Q Have you discussed your pleas fully with your

14 attorney?

15 A Just -- just within the half hour.

16 Q Well, do you want some more time to discuss it

17 with him? See, the problem is that we have a jury

18 outside.

19 A Yes.

20 Q You know, and -- well, do you need more time

21 to discuss this with your lawyer?

22 A I kind of came up with -- I started asking

23 questions when we kept going back here. I just kind of

24 was afraid. And these charges are serious. But a lot of

25 'em, I -- most -- actually, all the charges and the dates

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1 are not correct.

2 Q Well, if you want to go to trial, that option

3 is still open to you. We just need to know what you want

4 to do, okay?

5 A Yes.

6 Q Do you need time? I can't give you that much

7 time. [Defense counsel], a few minutes to talk to him without

8 the -- Court being present. But we got 50 people out there.

9 And for the record, it is now 3 o'clock. And we've been

10 here since 1:30 -- or the jury has been here since 1:30,

11 waiting. I can take a brief recess now if you think you

12 need it.

13 [DEFENSE COUNSEL]: I think we need it given his

14 hesitancy.

15 THE COURT: All right. Well take a brief

16 recess then. You folks need to talk. But when we come

17 back in about 10 minutes, then I need to know what you're

18 going to do, [Topasna].

19 [TOPASNA]: Thank you.

20 (A recess was taken.)

21 THE COURT: The record will note the presence

22 of [Topasna], his counsel, the prosecutor, in the

23 absence of the jury panel. The record will note that it

24 is now 3:22.

25 BY THE COURT:

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1 Q [Topasna], have you had an opportunity to

2 talk to [defense counsel]?

3 A Yes, Your Honor.

4 Q Have you decided what you want to do in this

5 case?

6 A Yeah.

7 Q What is that?

8 A Take the plea.

9 Q All right. Now, have you discussed your plea

10 fully with [defense counsel]?

11 A Yes. But its still the same. Its not

12 enough. Its still the same.

13 Q Are you satisfied with [defense counsel's] advice?

14 A Yes, Your Honor. Im new to this. So yes.

15 Q All right. Have you completely understood

16 what you and I have been talking about this afternoon?

17 A About the charges?

18 Q Everything. Everything weve been talking

19 about -- the charges, the plea agreement.

20 A Everything, yes.

21 Q All right. Do you have any questions about

22 anything having to do with this case -- the charge, the

23 defenses, your rights, the consequences of your plea, the

24 maximum penalties, the maximum penalties under the plea

25 agreement? Anything at all? Do you have any questions?

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1 [DEFENSE COUNSEL]: He asked about an appeal. But

2 I've informed him and you've informed him that by

3 pleading guilty, he's giving that up.

4 BY THE COURT:

5 Q If you plead guilty, you are giving up your

6 right to appeal any issue except if I give you an illegal

7 sentence. All right? Do you understand that?

8 A Yes.

9 Q All right. Do you have any questions other

10 than that?

11 A No.

12 Q All right. And [Topasna], I'm going to ask

13 that you sign the same form at the bottom of page 2 to

14 acknowledge that I questioned you about these matters,

15 you understand, and that you're entering your pleas

16 voluntarily.

17 [DEFENSE COUNSEL]: Your Honor, for the record,

18 [Topasna] has signed the acknowledgment portion of the  
19 change of plea form.

20 THE COURT: Thank you.

21 [DEFENSE COUNSEL]: Your Honor, I detect some  
22 hesitancy on his part. But I take it that he's decided  
23 to just accept the agreement.

24 BY THE COURT:

25 Q Well, [Topasna], you understand that once  
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1 you enter your pleas in this case, you're not going to be  
2 allowed to take them back and go to trial? If you make  
3 up your mind now, that's it. You decide to take the plea  
4 agreement and you enter your guilty pleas today, it's  
5 going to be very, very difficult for you to withdraw your  
6 pleas. All right?

7 A Well, I didn't have time enough to think about  
8 this, Your Honor. I just started asking questions when I  
9 got back --

10 Q Well, you want to go to trial? We have the  
11 jury outside. We can do that. You know -- well, I don't  
12 want to get into an argument with you, but this case has  
13 been pending for quite a while.  
14 A Yes.

15 Q And you know, we started jury selection and

16 then this came up. So that's just -

17 A I should have asked questions before the jury

18 selection started.

19 Q Were not at a position where we have much -

20 we're either going to continue with the jury selection or

21 we're going to take your plea. That's it. So you have

22 [defense counsel] saying that you're hesitant. What does that

23 mean? Do you want -- do you want to continue with the

24 jury selection in this case or do you want to take the

25 plea agreement?

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1 A Your Honor, yes. He's right. I'm hesitant.

2 But like I said, I'm afraid for even if -- even if I'm

3 found guilty or whatever, still -- to appeal on that, try

4 to go back to trial again and still spend some time in

5 jail. It's like, you know.

6 Q Well, I cannot tell you what to do,

7 [Topasna].

8 A Yes.

9 Q Do you understand your options here?

10 A Yes.

11 Q I've gone over those so that you do understand

12 them. Is that correct? And you don't have any other

13 questions?

14 A No, I don't.

15 Q So the only thing that we need to resolve is

16 whether you want to go ahead with the plea agreement. Is

17 that a yes or a no?

18 A Yes, Your Honor.

19 THE COURT: Okay. Now, the paragraph 6 of the

20 plea form says there is -- there is evidence and factual

21 basis in the police reports to sustain a conviction in

22 these cases. Is there a stipulation to a factual basis

23 in the police reports, [defense counsel]?

24 [DEFENSE COUNSEL]: Your Honor, obviously, if we

25 look at the grand jury transcript, which [Topasnas]

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1 had a chance to review, as well as the police report,

2 which he's had a chance to review on more than one

3 occasion, there's certainly factual basis in those

4 documents that would support the conviction.

5 THE COURT: [Prosecutor], do you want to

6 state a factual basis?

7 [PROSECUTOR]: If this case were to proceed

8 and if we were to call witnesses, the State would have

9 proved in Count I, that between September 1st, 1992, and

10 June 9th, 1995, while [the complaining witness] was less than 14

11 years old, when she was in the 5th, 6th, or 7th grade,

12 her mother's live-in boyfriend, [Topasna]

13 did knowingly subject her to sexual penetration

14 by inserting his finger into her vagina on more than one

15 occasion.

16 In Count II, during that same time period,

17 [Topasna] inserted his penis into the vagina of

18 [the complaining witness] when she was less than 14 years old.

19 As to Counts III, IV, and V, on or about the

20 1st day of September 1995, to and including the 19th day

21 of March 1997, while [the complaining witness] was in the 8th or

22 9th grade, [Topasna], in Count III, placed his mouth

23 on her vagina without her consent; in Count IV, inserted

24 his penis into [the complaining witness's] vagina without her

25 consent; and in Count V, forced [the complaining witness] to place

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1 her hands on [Topasna's] penis without her consent.

2 She was not married to [Topasna].

3 And as to Count VI, or on or about March 1st,

4 1997, to and including the 31st March 1997, when [the complaining

5 witness] was in the 9th grade, [Topasna] placed

6 his hand on [the complaining witness] -- I'm

7 sorry -- [the complaining witness's] vagina by the use of force.

8 I don't know, Your Honor. Did I misspeak in

9 the other counts? I meant to say [the complaining witness]. I

10 don't know if I said [the complaining witness].

11 All of these events occurred on this island at

12 their apartment at Lauiki Street, in the City and County

13 of Honolulu, State of Hawaii.

14 THE COURT: All right. [Topasna], to the

15 charge of Sexual Assault in the Second Degree in Count I,

16 what is your plea?

17 [TOPASNA]: Guilty.

18 THE COURT: To the charge of Sexual Assault in

19 the Second Degree in Count II, what is your plea?

20 [TOPASNA]: Guilty.

21 THE COURT: To the charge of Sexual Assault in  
22 the Second Degree in Count III, what is your plea?

23 [TOPASNA]: Guilty.

24 THE COURT: To the charge of Sexual Assault in  
25 the Second Degree in Count IV, what is your plea?

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1 [TOPASNA]: Guilty.

2 THE COURT: To the charge of Sexual Assault in  
3 the Fourth Degree in Count IV, what is your plea?

4 [TOPASNA]: Guilty.

5 THE COURT: And to the charge of Sexual  
6 Assault in the Third Degree in Count VI, what is your  
7 plea?

8 [TOPASNA]: Guilty.

9 THE COURT: I find that [Topasna]  
10 voluntarily enters his pleas with an understanding of the  
11 nature of the charges against him and the consequences of  
12 the pleas. I find a factual basis for the pleas. His  
13 pleas are accepted, and I find him guilty of Sexual  
14 Assault in the Second Degree in Counts I through IV,  
15 guilty of Sexual Assault in the Fourth Degree in Count V,  
16 and guilty of Sexual Assault in the Third Degree in Count

17 VI.

18 Sentencing is set for Friday, May 21st, 1999,

19 at 8:30 a.m. in this courtroom. [Topasna] is referred

20 to the Adult Probation Division for pre-sentence

21 investigation and report.

22 [DEFENSE COUNSEL]: What time?

23 THE COURT: 8:30 a.m., [defense counsel].

24 Okay. [Topasna], we will see you on May

25 21st.

JAMIE S. MIYASATO

Official Court Reporter

State of Hawaii

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1 [TOPASNA]: Thank you.

2 THE COURT: Okay. We'll stand in recess.

3 (End of proceedings.)

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JAMIE S. MIYASATO  
Official Court Reporter  
State of Hawaii